

REMARKS

The final Office Action dated October 14, 2008 ("Office Action"), has been received and carefully considered.

In this response, claims 11-13, 15-21 and 34-38 are pending. Claim 11 has been amended. No new matter has been added. This amendment is made to overcome a claim objection and to put the claims in better consideration for appeal.¹

Entry of the amendment to claim 11 is respectfully requested. Reconsideration of the outstanding rejections in the present application is also respectfully requested.

I. THE OBVIOUSNESS REJECTION OF CLAIMS 11-18

On page 2 of the final Office Action, claims 11-18 were rejected under 35 U.S.C. § 103(a) as being unpatentable over the Nissan Serena in view of U.S. Patent No. 4,847,972 to Anderson et al. ("Anderson"). This rejection is hereby respectfully traversed.

¹ As Applicant(s)'s remarks with respect to the Examiner's rejections are sufficient to overcome these rejections, Applicant(s)'s silence as to assertions made by the Examiner in the Office Action or certain requirements that may be applicable to such rejections (e.g., assertions regarding dependent claims, whether a reference constitutes prior art, whether references are legally combinable for obviousness purposes) is not a concession by Applicant(s) that such assertions are accurate or such requirements have been met, and Applicant(s) reserve(s) the right to analyze and dispute such in the future.

At the outset, Applicant would like to address the following statements made at page 4 of the Office Action:

Applicant has not refuted that it is old and well known to provide means of ingress and egress for handicapped persons in various vehicles as such it is taken to be admitted prior art.

Applicant has not refuted that rearranging parts of an invention involves only routine skill in the art as such it is taken to be admitted prior art.

Applicant has not refuted that discovering the optimum or workable ranges involves only routine skill in the art as such it is taken to be admitted prior art.

Applicant would like to respectfully submit on the record that none of the above are admitted prior art. Applicant has not admitted as such, and Applicant is unaware of what statute or regulation the Examiner is relying upon in asserting that the above are admitted prior art. Accordingly, Applicant respectfully requests that the Examiner give full consideration to all recitations in the claim and fully articulate how the cited references allegedly apply to recited claims.

Under 35 U.S.C. § 103, the Patent Office bears the burden of establishing a prima facie case of obviousness. In re Fine, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). The Patent Office can satisfy this burden only by showing some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead that individual to combine the relevant teachings of references. Id.

The obviousness factors are: (1) determining the scope and

content of the prior art; (2) ascertaining the differences between the claimed invention and the prior art; and (3) resolving the level of ordinary skill in the pertinent art; in addition, objective evidence, such as evidence of commercial success, long-felt but unsolved needs, failure of others, and unexpected results must be examined. Graham v. John Deere Co., 383 U.S. 1, 17-18, 148 U.S.P.Q. 459, 467 (1966) (factors affirmed by KSR Int'l Co. v. Teleflex, Inc., 550 U.S. __, __, 82 U.S.P.Q.2d 1385, 1391 (2007)). "Any obviousness rejection should include, either explicitly or implicitly in view of the prior art applied, an indication of the level of ordinary skill." MPEP § 2141. "[R]ejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." KSR Int'l Co. v. Teleflex, Inc., 550 U.S. __, __, 82 U.S.P.Q.2d 1385, 1396 (2007).

Regarding claim 11, the Office Action asserted that the Nissan Serena comprises an independent rear suspension and mountings therefor and Anderson discloses lowering a floorpan of a vehicle to facilitate ingress and egress of a handicapped person, and thus it would have been obvious to modify the Nissan Serena in view of the disclosure of Anderson to arrive at the claimed invention. Applicant respectfully disagrees.

Independent claim 11 clearly distinguishes over the cited references which do not disclose or suggest:

A vehicle configured to allow accessibility to the vehicle, the vehicle comprising:

a chassis structure comprising an original chassis structure and an additional chassis structure mounted to the original chassis structure;

a substitute rear suspension mounted to the chassis structure in place of an original rear suspension, the original rear suspension being a rear beam axle suspension, the substitute rear suspension being an independent rear trailing arm suspension having independent rear trailing arm suspension components mounted to opposite sides of the chassis structure; and

a floorpan supported by the chassis structure, the floorpan having a lowered portion supported directly by the additional chassis structure, the lowered portion being located directly between the independent rear trailing arm suspension components and extending forwardly from a rear entrance of the vehicle.

At the outset, Applicant respectfully submits that the Office Action does not specifically address all of the limitations of independent claim 1. For example, the Office Action does not address the recitation in claim 1 of an additional chassis structure mounted to the original chassis structure and/or a floorpan having a lowered portion supported directly by the additional chassis structure, the lowered portion being located directly between the independent rear

trailing arm suspension. The above recitations were argued in the previous response, but have not been specifically addressed in the Office Action.

In contrast to claim 11, Anderson merely discloses a van provided with a replacement chassis for providing wheelchair access to a side of the vehicle, and the Serena motor vehicle is merely a vehicle fitted with multi-link rear suspension as standard.

There would have been no reasons to combine the Nissan Serena with Anderson to arrive at the claimed invention since neither the Nissan Serena nor Anderson comprise or disclose a *substitute rear suspension mounted to the chassis structure* as presently claimed. Indeed, even if such reasons existed, such a combination would merely result in the Nissan Serena having rear multi-link suspension and a replacement chassis as taught by Anderson for providing wheelchair access to a side of the Nissan Serena. The end result would not arrive at the claimed invention because an essential claim element, i.e., a *floorpan supported by the chassis structure, the floorpan having a lowered portion supported directly by the additional chassis structure, the lowered portion being located directly between the independent rear trailing arm suspension components and extending forwardly from a rear entrance of the vehicle, is absent from the combination.* Indeed, the Nissan Serena has

other structure located between its rear wheels which would prevent a modification resulting in a floorpan having a lowered portion supported directly by the additional chassis structure, the lowered portion being located directly between the independent rear trailing arm suspension components and extending forwardly from a rear entrance of the vehicle.

Further, the Office Action never addresses, much less explains, how the combination would arrive at such substitute rear suspension and floorpan. A *prima facie* case of obviousness can only be established with articulated reasons for the alleged combination that are supported by rational underpinnings. Conclusory statements are not sufficient. KSR Int'l Co. v. Teleflex, Inc., 550 U.S. __, __, 82 U.S.P.Q.2d 1385, 1396 (2007). Here, the rejection is improper because the Office Action fails to articulate any reasons that the Nissan Serena would be combined with Anderson. The Office Action also fails to provide any reasons that the alleged combination - even if valid - would arrive at the claimed invention.

In view of the above arguments, Applicant respectfully submits that claim 11 is allowable over the Nissan Serena in view of Anderson and respectfully requests withdrawal of the rejection to independent claim 11. Should the Examiner maintain the rejection, it is respectfully requested that the Examiner address in detail the above arguments.

Regarding claims 12, 13, and 15-18, these claims are dependent upon independent claim 11. Thus, since independent claim 11 should be allowable as discussed above, claims 12, 13, and 15-18 should also be allowable at least by virtue of their dependency on independent claim 11. Moreover, these claims recite additional features which are not disclosed, or even suggested, by the cited references taken either alone or in combination.

In view of the foregoing, it is respectfully requested that the aforementioned obviousness rejection of claims 11-13 and 15-18 be withdrawn.

II. THE OBVIOUSNESS REJECTION OF CLAIMS 19-21

On page 4 of the final Office Action, claims 19-21 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Nissan Serena in view of Anderson and further in view of U.S. Pat. No. 4,688,843 to Hall et al. ("Hall").

It is respectfully submitted that the aforementioned obviousness rejection of claims 19-21 has become moot in view of the deficiencies of the primary references (i.e., Nissan Serena and Anderson) as discussed above with respect to independent claim 11. That is, claims 19-21 are dependent upon independent claim 11 and thus inherently incorporate all of the limitations of independent claim 11. Also, the secondary reference (i.e.,

Hall) fails to disclose, or even suggest, the deficiencies of the primary references as discussed above with respect to independent claim 11. Indeed, the Examiner does not even assert such. Thus, the combination of the secondary reference with the primary references also fails to disclose, or even suggest, the deficiencies of the primary references as discussed above with respect to independent claim 11. Accordingly, claims 19-21 should be allowable over the combination of the secondary reference with the primary references at least by virtue of their dependency on independent claim 11. Moreover, claims 19-21 recite additional features which are not disclosed, or even suggested, by the cited references taken either alone or in combination.

In view of the foregoing, it is respectfully requested that the aforementioned obviousness rejection of claims 19-21 be withdrawn.

III. THE OBVIOUSNESS REJECTION OF CLAIMS 34-38

On page 5 of the final Office Action, claims 34-38 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Nissan Serena in view of Anderson and further in view of U.S. Pat. No. 5,641,176 to Alatalo ("Alatalo").

It is respectfully submitted that the aforementioned obviousness rejection of claims 34-38 has become moot in view of

the deficiencies of the primary references (i.e., Nissan Serena and Anderson) as discussed above with respect to independent claim 11. That is, claims 34-38 are dependent upon independent claim 11 and thus inherently incorporate all of the limitations of independent claim 11. Also, the secondary reference (i.e., Hall) fails to disclose, or even suggest, the deficiencies of the primary references as discussed above with respect to independent claim 11. Indeed, the Examiner does not even assert such. Thus, the combination of the secondary reference with the primary references also fails to disclose, or even suggest, the deficiencies of the primary references as discussed above with respect to independent claim 11. Accordingly, claims 34-38 should be allowable over the combination of the secondary reference with the primary references at least by virtue of their dependency on independent claim 11.

Moreover, claims 34-38 recite additional features which are not disclosed, or even suggested, by the cited references taken either alone or in combination. For instance, Alatalo fails to teach or suggest an independent rear trailing arm suspension component comprising an elongated arm having a pivotal coupling at a front end thereof for enabling the elongated arm to pivot with respect to the chassis structure of the vehicle about an axis substantially transverse to a longitudinal axis of the elongated arm. The Office Action (at page 5) merely states that

Alatalo discloses a "trailing arm." The Office Action fails to point out how Alatalo allegedly teaches or suggest recitations of claim 34 and/or where those alleged teachings or suggestions are found in Alatalo.

In view of the foregoing, it is respectfully requested that the aforementioned obviousness rejection of claims 34-38 be withdrawn.

IV. CONCLUSION

In view of the foregoing, it is respectfully submitted that the present application is in condition for allowance, and an early indication of the same is courteously solicited. The Examiner is respectfully requested to contact the undersigned by telephone at the below listed telephone number, in order to expedite resolution of any issues and to expedite passage of the present application to issue, if any comments, questions, or suggestions arise in connection with the present application.

To the extent necessary, a petition for an extension of time under 37 CFR § 1.136 is hereby made.

Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 50-0206, and please credit any excess fees to the same deposit account.

Respectfully submitted,

Hunton & Williams LLP

By: 

Thomas E. Anderson

Registration No. 37,063

TEA/ple

Hunton & Williams LLP
1900 K Street, N.W.
Washington, D.C. 20006-1109
Telephone: (202) 955-1500
Facsimile: (202) 778-2201

Date: 12/15/08